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7  
 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10  
 11 THOMAS FERNANDEZ, LORA SMITH,  
 and TOSHA THOMAS

12 Plaintiffs,

13 vs.

14 K-M INDUSTRIES HOLDING CO., INC.;  
 15 K-M INDUSTRIES HOLDING CO., INC.  
 ESOP PLAN COMMITTEE; WILLIAM  
 16 E. AND DESIREE B. MOORE  
 REVOCABLE TRUST; TRUSTEES OF  
 17 THE WILLIAM E. AND DESIREE B.  
 MOORE REVOCABLE TRUST;  
 18 ADMINISTRATOR OF THE ESTATE OF  
 WILLIAM E. MOORE, DECEASED; CIG  
 19 ESOP PLAN COMMITTEE; and NORTH  
 STAR TRUST COMPANY,

20 Defendants.

21 Case No. C06-07339 CW

**STIPULATION AND [PROPOSED]  
 ORDER MODIFYING CASE  
 MANAGEMENT SCHEDULING ORDER  
 FOR REASSIGNED CIVIL CASE**

22 WHEREAS, this action was reassigned to this Court from the Honorable Martin J.  
 Jenkins;

23 WHEREAS, this Court entered a Case Management Scheduling Order for Reassigned  
 Civil Case (“Scheduling Order”) on March 5, 2008, modifying Judge Jenkins’s December 16,  
 24 2007 Pre-Trial Order;

25 WHEREAS, the Scheduling Order set July 31, 2008, as the deadline for hearing motions  
 26 for summary judgment on the issue of statute of limitations;

1           WHEREAS, Defendants filed their respective motions for summary judgment and noticed  
 2 the hearings on those motions for July 31, 2008;

3           WHEREAS, on July 17, 2008, after the briefing on the Defendants' motions for summary  
 4 judgment had been completed but before the motions were heard, the parties filed a Stipulation  
 5 and [Proposed] Order continuing the hearing on Defendants' motions to September 11, 2008, so  
 6 that the parties could participate in a private mediation on August 18, 2008;

7           WHEREAS, after the parties filed their Stipulation and [Proposed] Order continuing the  
 8 hearing on the Defendants' motions, one of the parties essential to the mediation became  
 9 unavailable for the scheduled mediation. The first day after August 18, 2008 on which the  
 10 mediator, Mr. Tony Piazza, and all of the parties were available to participate in the mediation  
 11 was September 12, 2008, the day *after* the stipulated hearing date on the Defendants' motions for  
 12 summary judgment. The parties have reserved September 12, 2008, with Mr. Piazza;

13           WHEREAS, the parties continue to believe that mediation is likely to be more productive  
 14 if it is conducted before the Court holds the hearing on Defendants' motions for summary  
 15 judgment; and

16           WHEREAS, continuing the hearing date on the Defendants' motions to a date subsequent  
 17 to the September 12, 2008 mediation necessarily impacts the other dates in the Scheduling Order,

18           NOW THEREFORE AND FOR GOOD CAUSE SHOWN, THE PARTIES HEREBY  
 19 STIPULATE and AGREE as follows:

- 20           1.       The hearing on Defendants' Motions for Summary Judgment shall be continued to  
                  October 30, 2008, at 2:00 p.m.;
- 22           2.       Disclosure of experts and initial reports shall be completed by November 28, 2008;
- 23           3.       Disclosure of rebuttal experts and reports shall be completed by December 19,  
                  2008;
- 25           4.       Expert discovery shall be completed by January 23, 2009;
- 26           5.       Last day for hearing dispositive motions shall be March 26, 2009, at 2:00 p.m.;
- 27           6.       Case Management Conference shall be held on March 26, 2009, at 2:00 p.m.;

28           ///

7. The pre-trial conference shall be held on June 30, 2009, at 2:00 p.m.; and
8. The bench trial (15 days) shall commence on August 3, 2009, at 8:30 a.m..

## **IT IS SO STIPULATED:**

I, Donald P. Sullivan, attest, pursuant to General Order No. 45, Rule X, that the undersigned concur in the filing of this Stipulation.

DATED: August 20, 2008

## LOVITT & HANNAN, INC.

By: /S/ Henry Bornstein

Henry Bornstein  
Attorneys for Defendants K-M Industries  
Holding Co., Inc.; K-M Industries Holding  
Co., Inc. ESOP Plan Committee; and CIG  
ESOP Plan Committee

DATED: August 20, 2008

## HENNIGAN, BENNETT & DORMAN LLP

By: /S/ Allison Chock

Lauren Smith  
Allison Chock  
Attorneys for Defendants William E. and  
Desiree B. Moore Revocable Trust; Trustee  
of the William E. and Desiree B. Moore  
Revocable Trust; Desiree B. Moore  
Revocable Trust; William E. Moore Marital  
Trust; William E. Moore Generation-  
Skipping Trust; and Desiree Moore

DATED: August 20, 2008

## MORGAN, LEWIS & BOCKIUS LLP

By: /S/ Donald P. Sullivan

Nicole A. Diller  
Donald P. Sullivan  
Attorneys for Defendant North Star Trust  
Company

DATED: August 20, 2008

LEWIS, FEINBERG, LEE, RENAKER &  
JACKSON, P.C.

By: /S/ Daniel M. Feinberg

Daniel M. Feinberg  
Todd Jackson  
Attorneys for Plaintiffs Thomas Fernandez,  
Lora Smith, and Tosha Thomas

## [PROPOSED] ORDER

FOR GOOD CAUSE SHOWN, it is hereby ordered that the Court's March 5, 2008 Scheduling Order shall be amended as follows:



## **IT IS SO ORDERED.**

DATED:

The Honorable Claudia Wilken  
United States District Judge

DB2/20800807.2